United Nations CCPR/C/SR.2798

International Covenant on Civil and Political Rights

Distr.: General
9 September 2011

Original: English

Human Rights Committee

101st session

Summary record (partial)* of the 2798th meeting
Held at Headquarters, New York, on Wednesday, 30 March 2011, at 3 p.m.

Chairperson: Ms. Majodina

Contents

Follow-up to concluding observations on State reports and to Views under the Optional Protocol

Follow-up progress report of the Human Rights Committee on individual communications

Report of the Special Rapporteur for follow-up on concluding observations

* No summary record was prepared for the rest of the meeting.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Chief, Official Records Editing Section, room DC2-750, 2 United Nations Plaza.

Any corrections to the record of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

11-28355 (E)

Please recycle

The meeting was called to order at 3.05 p.m.

Follow-up to concluding observations on State reports and to Views under the Optional Protocol

Follow-up progress report of the Human Rights Committee on individual communications (CCPR/C/101/R.2)

1. **Mr. Iwasawa**, speaking as the temporary Special Rapporteur for follow-up on Views under the Optional Protocol, introduced the follow-up progress report on individual communications (CCPR/C/101/R.2), which included information received since the Committee's 100th session.

2. With regard to the case of *Hamida v. Canada* (Communication No. 1544/2007), he noted that the State party had reported that, as a result of the Committee's intervention, the order for the expulsion of the author had not been carried out. Although the Committee's communication to the lawyer had been returned due to a change in address, as far as the State party was aware, the author remained in Canada. The submission had been faxed to the lawyer's new office in February and the Committee was awaiting a reply. He recommended that the Committee should await receipt of comments prior to making a decision on the matter and consider the follow-up dialogue ongoing.

3. **Mr. Iwasawa**, referring to the case of *Adrien Mundyo Busyo et al. v. Democratic Republic of the Congo* (Communication No. 933/2000), said that the State party had been invited to reply to the Committee's Views by 26 February 2011. He wished to know whether the Committee secretariat had received any communication from the State party to that effect.

4. **Ms. Fox** (Secretary of the Committee) said that no reply had been received from the State party.

5. **Mr. Iwasawa** recommended that the Committee should schedule a meeting with the Permanent Representative of the State party during the July 2011 session and consider the dialogue ongoing.

6. The Committee's Views in *Eshonov v. Uzbekistan* (Communication No. 1225/2003), *Batyrov v. Uzbekistan* (Communication No. 1585/2007), *Lyashkevich v. Uzbekistan* (Communication No. 1552/2007), *Tolipkhuzhaev v. Uzbekistan* (1280/2004), *Gapirjanov v. Uzbekistan* (Communication No. 1589/2007) and *Turaeva v. Uzbekistan* (1284/2004) had been examined by the Inter-Institutional Working Group, created by decision of the Committee of Ministers adopted on 24 February 2004, which monitored respect for human rights by law enforcement authorities in Uzbekistan. In each of the cases, the Inter-Institutional Working Group had concluded that the authors' allegations were groundless, that no violations had taken place and that the Committee's conclusions had been based on allegations that were not corroborated by other documented evidence.

7. **The Chairperson**, speaking in her capacity as an expert, said it was disturbing that the State party asserted that the allegations were groundless in each of the six cases.

8. **Mr. O'Flaherty** said that the Committee needed to better understand the function of the Inter-Institutional Working Group. He proposed that the Committee should take up the matter at another meeting to determine the best way to engage with the State party.

9. **The Chairperson** noted the Committee's agreement with that proposal as well as a minor drafting change.

10. *The recommendations contained in the follow-up progress report of the Human Rights Committee on individual communications, as amended, were approved.*

11. **Mr. Thelin**, speaking as the newly elected Special Rapporteur for follow-up on Views, thanked Mr. Iwasawa for his contribution and his willingness to cover during the transition period. He drew the Committee's attention to a report entitled *From Judgment to Justice: Implementing International and Regional Human Rights Decisions*, published by Open Society Initiative Foundations in November 2010. Underscoring the high quality of that report, he said that the observations and recommendations contained in it could usefully inform the work of the Committee.

Report of the Special Rapporteur for follow-up on concluding observations (CCPR/C/101/2/CRP.1)

12. **Ms. Prophette-Pallasco** (Human Rights Officer, Office of the United Nations High Commissioner for Human Rights (OHCHR)), introduced the report of the Special Rapporteur for follow-up on concluding observations (CCPR/C/101/2/CRP.1). Of the 10 submissions by States parties, four had been approved; consideration of one had been postponed; five had not been analysed or verified; and a response was still pending for one.

13. The Central African Republic had been eliminated from the report, since, according to the last follow-up report, the information requested of it had been received and it was scheduled to submit another periodic report.

14. She wondered whether the United Nations Interim Administration Mission in Kosovo (UNMIK) should be included in the report, as no date was indicated for the submission of a periodic report. The question should be brought up with the Committee.

15. **Mr. Rivas Posada** noted that in the discussion of the concluding observations on Serbia, it had been decided that a paragraph on UNMIK should be incorporated. He wondered whether it would be misleading to include a recommendation that did not provide for any future measure, as if the situation had been resolved. Another recommendation could be adopted by the Committee, since the case had not been settled and the Committee would not wish to give the impression that it was satisfied with the status quo, when in fact it considered the case to be pending.

16. **Mr. Thelin** agreed with Mr. Rivas Posada and stressed the need for a meeting with UNMIK.

17. **Mr. O'Flaherty** said that he shared the opinions of Mr. Rivas Posada and Mr. Thelin and an effective means of communicating with UNMIK must be found. Since the head of UNMIK was the Special Representative of the Secretary-General, correspondence should be directed to the Secretary-General, who could then designate the appropriate person to respond.

18. **Ms. Chanet** said that she agreed with Mr. O'Flaherty and Mr. Rivas Posada. She had been unable to consult the previous follow-up report prepared by Mr. Amor and regretted that the Committee had been unable to meet with UNMIK representatives in New York, a step that she considered a necessity.

19. **The Chairperson** acknowledged the need for contact at a more formal level, in the form of a meeting with UNMIK or with the Special Representative of the Secretary-General.

20. **Mr. O'Flaherty** said that he was not suggesting two meetings. The head of UNMIK was also the Special Representative of the Secretary-General. A meeting could be held with the Special Representative, but correspondence should be sent to the Secretary-General.

21. **Sir Nigel Rodley** said that he saw the political value of addressing correspondence to the Secretary-General. Thus far, however, the Committee had always sent its letters to the Special Representative. Since UNMIK was the designated authoritative body, and the head of UNMIK was the Special Representative of the Secretary-General, there was a possibility that direct communication with the Secretary-General might arouse resentment on the part of the Special Representative, which could hinder dialogue.

22. **Mr. O'Flaherty** said that he had considered that possibility, but that UNMIK could not be more uncooperative than it already was.

23. **The Chairperson** wondered whether a meeting could be held in Geneva in July. The matter should perhaps be left to the new incoming Special Rapporteur, Ms. Chanet.

24. **Ms. Chanet** noted that there was no UNMIK representative in Geneva. Writing was therefore the only option.

25. **The Chairperson** wondered whether the letter should be sent to the head of UNMIK with a copy to the Secretary-General.

26. **Mr. O'Flaherty** said that the Secretary-General should not be copied with the letter.

27. **Ms. Prophette-Pallasco** (Human Rights Officer, Office of the United Nations High Commissioner for Human Rights (OHCHR)) said that, in a letter received by the Committee on 4 February, the Permanent Mission of Bosnia and Herzegovina had indicated that the information requested in the Committee's letter dated 11 December 2010 had already been provided on 21 December 2007 in its response to the concluding observations. Bosnia and Herzegovina did not wish to provide additional information beyond that. He recommended that the Committee should refrain from taking further action until it had received the report that the State party was supposed to submit on 1 November 2010.

28. **The Chairperson** invited comments and proposals on a course of action.

29. **Mr. O'Flaherty** said that the Committee could follow standard procedure and ask the State party to provide answers in its forthcoming report.

30. **Ms. Prophette-Pallasco** (Human Rights Officer, Office of the United Nations High Commissioner for

Human Rights (OHCHR)) said that that had already been done in the Committee's letter of 16 December 2010.

31. With respect to Honduras, she said that no information had been provided in response to the Committee's letter of 16 December 2010.

32. With regard to Ukraine, a letter had been sent on 28 September 2010 recalling the questions the Committee had posed in April 2010. No reply had been received. She recommended that a reminder should be sent.

33. **Mr. Thelin** noted the addition of the words "sent late" with respect to the letter sent on 28 September 2010, and also elsewhere in the report, and asked for clarification.

34. **Ms. Fox** (Secretary of the Committee) explained that some letters had not been sent out until late October because of the secretariat's capacity at that time. The situation appeared to have been remedied since then.

35. **Ms. Prophette-Pallasco** (Human Rights Officer, Office of the United Nations High Commissioner for Human Rights) said that a letter requesting a meeting with a representative of Barbados had been sent out on 16 December 2008. No response had been received but ultimately a meeting had been held with the Ambassador of the State party on 31 March 2009. A request for additional information had been sent out on 29 July 2009, with reminders on 23 April 2010 and 28 September 2010, asking the State party to provide additional information in its next periodic report, which was supposed to have been submitted the day before. Accordingly, no further measures were needed.

36. **Mr. O'Flaherty** noted the discrepancy between that recommendation and the one contained in the report. The fact that the deadline for a periodic report had just passed meant that the State party would have to deal with outstanding matters in the next periodic report after that. That was also the case of Madagascar, Algeria and a few other countries.

37. **Ms. Prophette-Pallasco** (Human Rights Officer, Office of the United Nations High Commissioner for Human Rights) said that in a letter dated 31 January 2011 the Permanent Mission of Chile had asked for clarification with respect to the Committee's request for additional information on the suitability of persons serving sentences for committing human rights violations to hold public office. Apparently, all the information provided by the Truth and Reconciliation Commission was still confidential. The point had been discussed with Ms. Chanet, and it had been decided to send a letter clarifying the Committee's request.

38. She took note of Mr. O'Flaherty's comment on Madagascar. No further action was to be taken.

39. A partial response had been sent by the Czech Republic. While the information provided was satisfactory with respect to a number of issues, the Special Rapporteur was recommending that a letter should be sent to the State party indicating that the information was incomplete and/or insufficient with respect to the points flagged in his report.

40. With regard to the Sudan, no reply had been received to the letter sent on 16 December 2010, and no additional measure was recommended, pending a reply.

41. **The Chairperson**, turning to the concluding observations on Zambia, said that the State party had sent a response to the Committee. It was suggested that a letter should be sent to the State party indicating that the follow-up procedure would cease in respect of issues on which satisfactory responses had been given, namely, allocation by the Government of additional funds for the Zambian Human Rights Commission (para. 10 (a)); access by the Human Rights Commission to funds from international institutions and other sources of external funding (para. 19 (b)); creation and introduction of alternatives to imprisonment (para. 23 (a)); and measures taken to reduce the length of pretrial detention (para. 23 (b)). However, additional information was needed on the mandate and functions of the Human Rights Commission (para. 10 (c)); the adequacy of the funds allocated to the Human Rights Commission to meet its needs (para. 10 (a)); the extent to which measures alternative to imprisonment were being taken (para. 23 (a)); the real impact of measures introduced to shorten pretrial custody (para. 23 (b)); measures taken to ensure that prisoners had adequate access to health care and food in prisons (para. 23 (c)); and the review of the status of the Commission, due in 2011 (para. 10 (d)).

42. Lastly, a previous recommendation by the Committee, approved by Mr. Amor, concerning the compliance of customary laws and practices with the rights provided for in the Covenant and, in particular,

the rights of women and their participation in the ongoing review and codification process of customary laws and practices (concluding observations, para. 13) had still not been implemented.

43. **Mr. O'Flaherty** stressed that the Committee must be fair and accord all State parties equal treatment in deciding whether or not to consider overdue replies to concluding observations as a whole.

44. **Ms. Fox** (Secretary of the Committee) said that in the past, responses received from States parties after the due date had been transmitted to the Rapporteur for an opinion on how to proceed. Both Special Rapporteurs and States parties should be reminded that once the responses to follow-up questions were due, there should be no further correspondence.

45. **Mr. O'Flaherty** noted that where a State party chose to provide information, perhaps the criterion for allowing an exception should be continued engagement. The incoming Rapporteur, Ms. Chanet, might wish to look at the system as a whole and make some suggestions on consistent application.

46. **Ms. Chanet** said that she was aware of those seeming inconsistencies. Some States parties might find it in their interest to ignore the follow-up procedure and provide no information. While the follow-up procedure was useful in that it took NGO findings into account, it was also somewhat burdensome and required a great deal of work by the Secretariat and frequent liaison with the Special Rapporteur. Coordination between the Secretariat members preparing universal periodic reviews and the country report task forces of the Human Rights Committee would ensure that matters that had been in abeyance could be addressed. The mechanism should be reviewed to ensure consistency and clarity.

47. **Sir Nigel Rodley** said that responses that came in after the Committee had suspended the follow-up procedure because of failure to meet the due date might be best dealt with in the context of the State party's next report. Another area for development was evaluation, which should go beyond merely indicating whether or not procedures had or had not been completed. Criteria might need to be further refined, given the multiplicity of recommendations.

48. **The Chairperson**, agreeing with Sir Nigel, said that she looked forward to the development of a more streamlined method of follow-up.

49. **Mr. O'Flaherty** proposed that a decision on the recommended action regarding the Libyan Arab Jamahiriya should be deferred until related items had been discussed.

50. **Mr. Thelin** said that it was important to note that Committee members were not taking part in decisions relating to countries of which they were nationals in respect of any of the reports under consideration at the current meeting.

51. **Mr. O'Flaherty** expressed surprise at the action recommended with regard to the concluding observations on San Marino. On the one hand, the Committee indicated its satisfaction with the State party's replies, but, on the other hand, that additional information would nonetheless be requested. Such a contradictory request could prove unwelcome to States parties.

52. **Ms. Chanet** said that she supported the view expressed by Mr. O'Flaherty. Moreover, the case in question highlighted the importance of maintaining a relationship with the universal periodic review and keeping the Human Rights Council apprised of the Committee's follow-up procedure. Ideally, the universal periodic review would take into account the responses already provided to the Committee when requesting information from States parties.

53. **Ms. Prophette-Pallasco** (Human Rights Officer, Office of the United Nations High Commissioner for Human Rights) said that, according to the guidelines on the Committee's response to States parties' replies, the Committee could communicate its satisfaction regarding some aspects of the State party's implementation of its recommendations while requesting more information on others. If the Committee were to decide to do away with that practice, the recommended action would need to be modified for a number of other States parties.

54. **Mr. O'Flaherty** said that if the Committee was satisfied, it should simply declare that the follow-up procedure was concluded, in the case of San Marino and all other States parties.

55. **Mr. Iwasawa**, recalling that, at its ninety-fifth session, the Committee had decided to increase the number of categories used to classify information provided by States parties from three to five, said that if the Committee decided that the replies provided by a State party were "largely satisfactory", it should simply conclude the follow-up procedure. The Committee had

done just that in respect of Austria at its ninety-eighth session, which had created a precedent.

56. **Sir Nigel Rodley** said that when there were only three categories from which to choose, the Committee had often classified the information provided by States parties as "incomplete", not only when they had failed to implement the Committee's recommendations, but also in the event that they took issue with those recommendations. The Committee must take care to apply the new categories judiciously. If a State party demonstrated broad implementation of the Committee's recommendations, the follow-up procedure should be concluded. However, the Committee should be able to consider certain elements satisfactory, while requesting additional information in respect of others. Assuming that San Marino had implemented the Committee's major recommendations, its response should be classified as "largely satisfactory" and the follow-up procedure should be concluded.

57. **Mr. O'Flaherty** said that he was not arguing for a deviation in practice or procedure. The issue at hand had more to do with the contradictory language of the recommended action: he failed to understand how the Committee could declare that the follow-up procedure had concluded in one sentence and, in the next, request additional information.

58. **Ms. Chanet** supported the statement made by Sir Nigel Rodley, according to which the Committee had to apply judiciously the new categories for classification of States parties' replies.

59. **Ms. Prophette-Pallasco** (Human Rights Officer, Office of the United Nations High Commissioner for Human Rights), turning to the concluding observations on Japan, said that while according to the normal procedure, a further reminder should be sent regarding the information requested by the Committee, the usefulness of such a reminder had been questioned, given the recent tragic events in Japan.

60. Turning to the concluding observations on Spain, she drew the Committee's attention to the recommended action, which, similarly to that proposed in respect of San Marino, stated the Committee's overall satisfaction, while requesting additional information.

61. **Mr. O'Flaherty** said that the recommended action for Azerbaijan had made no reference to the Committee's recommendations in paragraphs 9, 11 and 15 of its concluding observations. He asked whether that was because the State party had carried out all the actions recommended in those paragraphs.

62. **Ms. Prophette-Pallasco** (Human Rights Officer, Office of the United Nations High Commissioner for Human Rights) said that analysis done during a transitional period needed to be studied in further detail to verify whether all those recommended actions had indeed been carried out.

63. **Mr. O'Flaherty** suggested that the recommended action should be amended to state that a reply would be sent drawing attention to all deficiencies, which would be enumerated.

64. **Ms. Chanet** drew the Committee's attention to the recommendation, in which it was stated "The conditions for registration of the address of Azerbaijani citizens in principle make it possible for all displaced and stateless persons to register." In the French version, it was unclear what those conditions for registration would enable displaced and stateless persons to do. If registration was what was being referred to, that represented a worsening of the situation, because not only were citizens required to register their domicile with the authorities, but others now had to as well. A letter of the kind being recommended should not be sent.

65. **Ms. Prophette-Pallasco** (Human Rights Officer, Office of the United Nations High Commissioner for Human Rights) suggested that the decision on that specific case should be adjourned until the next session. Further analysis with Ms. Chanet was needed, taking into account that the current language had been approved by Mr. Amor when he was Special Rapporteur.

66. **Mr. O'Flaherty** said that a phrase such as "pending analysis" should be used for the section in question.

67. **Ms. Prophette-Pallasco** (Human Rights Officer, Office of the United Nations High Commissioner for Human Rights) said that no responses had been received from Chad, Ecuador, the Netherlands or Tanzania and suggested that reminders should be sent to them again.

68. An exhaustive response had been received from the Russian Federation and a letter should be sent in reply. The Special Rapporteur gave detailed guidance on what that letter should include.

69. **Mr. O'Flaherty** said that it was difficult to assess whether the recommended actions were appropriate because the references to the Committee's concluding observations were incomplete and appeared to be highly paraphrased. The recommendations had referred to various paragraphs, the texts of which were not at hand. It was important for the language of the Committee's priority-action concluding observations to be reproduced in full in reports such as the one being reviewed.

70. **Sir Nigel Rodley** said that the full language of concluding observations did not always need to be included in the recommendation, but in the case under discussion not enough language had been provided. More complete language would be useful not just for the Committee but also for the readers of its annual report. Inclusion of the texts in full could be off-putting to readers, but slightly fuller explanations of the response and the evaluation would be welcome.

71. **Ms. Chanet** said that the recommendation was so poorly phrased that the State party might not respond to it. A summary should be drafted including all the essential points along with a few short references to the Committee's concluding observations, which did not need to be quoted in full. She suggested that the Committee secretariat should revise the recommendation.

72. **Mr. O'Flaherty** said that normally only three or four paragraphs of the concluding observations were indicated for follow-up action. There was no need to paraphrase them in the recommendation in question because there were only four of them. In order to determine whether the measures being taken were appropriate, he needed to be reminded of exactly what the Committee had adopted.

73. **Ms. Prophette-Pallasco** (Human Rights Officer, Office of the United Nations High Commissioner for Human Rights) said that she had taken note of the need to rewrite the recommendation. The Committee's concluding observations could be quoted in full but the paragraph in question would be much longer.

74. **Mr. O'Flaherty** said that in most cases the paragraphs were not very long and in the case of the recommendation to the Russian Federation, quoting them in full would not make it very much longer.

75. **Ms. Prophette-Pallasco** (Human Rights Officer, Office of the United Nations High Commissioner for Human Rights) said that responses had been received from Croatia and from Switzerland. In the case of Croatia, non-governmental organizations had also provided a report. While acknowledging the cooperativeness of those States parties, the Committee should send both of them a letter, the recommended contents of which were summarized in the report.

76. **Mr. O'Flaherty** said that in the case of both Croatia and Switzerland, elements in the recommendation did not seem to bear any relationship to the information requested. For example, paragraph 14 of the concluding observations made no mention of the creation of a national statistical database on police violence and complaints lodged against the police. That demonstrated, yet again, that it was necessary for those observations to be quoted in full.

77. **Ms. Prophette-Pallasco** (Human Rights Officer, Office of the United Nations High Commissioner for Human Rights) said that a response had been received from Moldova and that information had also been provided by non-governmental organizations. The country team had requested, however, that the responses should be examined during the Committee's next session because there was a substantial amount of information that it wished to provide but had been unable to obtain in time for the current session. That suggestion had been approved by Mr. Amor.

78. **The Chairperson** said that when the report was adopted, the need to improve methodology would be noted, including the streamlining of methods used in the preparation of follow-up reports.

79. *The recommendations contained in the report of the Special Rapporteur for follow-up on concluding observations, as amended, were adopted.*

The discussion covered in the summary record ended at 5.30 p.m.